



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on November 1, 2004

**NOTICE OF ACTION TAKEN -- DOCKETS OST-2004-18920 & 2004-18919**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **SriLankan Airlines Ltd. & Emirates**

Date Filed: August 17, 2004

Relief requested:

**SriLankan Airlines Ltd. (Docket OST-2004-18920)**--Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail from points behind Sri Lanka via Sri Lanka and intermediate points to a point or points in the United States and beyond, pursuant to a code-share arrangement with Emirates, a foreign air carrier of the United Arab Emirates (U.A.E.).

**Emirates (Docket OST-2004-18919)**--Statement of authorization under 14 CFR Part 212 to the extent necessary to permit Emirates to display the designator code of SriLankan Airlines Ltd. ("UL") on flights operated by Emirates between the U.A.E. and the United States.<sup>1</sup>

If renewal, date and citation of last action: New authority

Applicant(s) representative: Jeffrey A. Manley (202) 663-6670 (for both carriers)

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: None filed

**DISPOSITION**

Action: Approved

Action date: November 1, 2004

Effective dates of exemption authority granted SriLankan Airlines: November 1, 2004-November 1, 2006

Effective dates of the statement of authorization granted Emirates: November 1, 2004-November 1, 2006

Basis for approval (bilateral agreement/reciprocity): Air Services Agreements between the United States and Sri Lanka (for SriLankan Airlines) and between the United States and the U.A.E. (for Emirates)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: X  
Standard exemption conditions attached for both SriLankan Airlines & Emirates.

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that SriLankan Airlines is financially and operationally qualified to perform the services authorized above. However, we are unable to find that SriLankan Airlines is substantially owned and effectively controlled by Sri Lankan nationals. Specifically, the applicant states that it is owned by the Government of Sri Lanka (51%) and its codeshare partner, Emirates (44%).<sup>2</sup> In addition, SriLankan Airlines' chairman and four of its six directors are citizens of Sri Lanka.<sup>3</sup> In spite of the fact that we are unable to find that SriLankan Airlines is substantially owned and effectively controlled by homeland nationals, we find it appropriate to waive our ownership and

<sup>1</sup> Emirates states that, at present, New York is the only U.S. city at which it operates services using its own aircraft.

<sup>2</sup> Emirates is wholly owned by the Government of Dubai. In 1998, Emirates, the government of Sri Lanka and SriLankan Airlines entered into a shareholders agreement in which Emirates was granted management rights over SriLankan Airlines for a period of ten years. Under the agreement, the government of Sri Lanka retains majority (51%) share ownership and control of the applicant and majority representation on the board of directors, including the sole right to select the chairman of the board.

<sup>3</sup> The two remaining positions are held by citizens of the United Kingdom. All but two of SriLankan Airlines' key management positions are held by citizens of Sri Lanka.

control requirements. The carrier is properly licensed and designated by the Government of Sri Lanka to perform the proposed services, and there is no evidence on the record which would suggest that the ownership of the carrier would be inimical to U.S. aviation policy or interests.

By memorandum dated October 21, 2004, the FAA noted that it has not conducted an assessment of Sri Lanka's civil aviation authority under the FAA's International Aviation Safety Assessment program, and stated that it has no safety information on SriLankan Airlines. Based on the advice of the FAA and the evidence in the docket, we found that there was no basis to find that SriLankan Airlines was unqualified to conduct the proposed code-share operations with Emirates.<sup>4</sup>

The statement of authorization granted to Emirates is subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as (i) Emirates and SriLankan Airlines continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Emirates and/or SriLankan Airlines must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services.<sup>5</sup> Such notices should be filed in Docket OST-2004-18919.

(c) Emirates and/or SriLankan Airlines must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served and the date on which the service will begin. Such notices should be filed in Docket OST-2004-18919.

(d) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.

(e) The authority granted here is specifically conditioned so that neither Emirates nor SriLankan Airlines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**Action taken by: Paul L. Gretch, Director**  
**Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:*  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

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<sup>4</sup> SriLankan Airlines may not itself operate flights to or from the United States without further order of the Department.

<sup>5</sup> We expect this notification to be received within 10 days of such noneffectiveness or of such decision.

## **Foreign Carrier Exemption Conditions**

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.